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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

SEP 29 2022

SEAN F. McAVOY, CLERK
DEPUTY
SPOKANE, WASHINGTON

9 UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF WASHINGTON

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 v.

14 DAVID NABIEL AKHDARY
15 (a/k/a "Nabiel Akhdary"),

16 Defendant.

Case No.: 2:22-CR-71-TOR-1

Fed. R. Crim. P. 11(c)(1)(C)
Plea Agreement

17 Plaintiff United States of America, by and through Vanessa R. Waldref,
18 United States Attorney the Eastern District of Washington, and Patrick J.
19 Cashman, Assistant United States Attorney for the Eastern District of Washington,
20 and Defendant David Nabiel Akhdary, a/k/a "Nabiel Akhdary ("Defendant"), both
21 individually and by and through Defendant's counsel, Bryan Whitaker, agree to the
22 following Plea Agreement.

23 1. Guilty Plea and Maximum Statutory Penalties

24 Defendant agrees to enter a plea of guilty to the sole count of the Indictment
25 filed on June 22, 2022, which charges Defendant with Possession with Intent to
26 Distribute 40 Grams of Fentanyl, in violation of 21 U.S.C. § 841(a)(1),
27 (b)(1)(B)(vi), a Class B felony.

28 Defendant understands that the following potential penalties apply:

- a. a term of imprisonment of not less than 5 years and up to 40 years;
- b. a term of supervised release of not less than 4 years and up to a lifetime;
- c. a fine of up to \$5,000,000;
- d. a \$100 special penalty assessment; and
- e. denial of certain federal benefits

2. Supervised Release

Defendant understands that if Defendant violates any condition of Defendant's supervised release, the Court may revoke Defendant's term of supervised release, and require Defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in such term of supervised release without credit for time previously served on postrelease supervision, up to the following terms:

- a. 5 years in prison if the offense that resulted in the term of Supervised Release is a class A felony,
- b. 3 years in prison if the offense that resulted in the term of Supervised Release is a class B felony, and/or
- c. 2 years in prison if the offense that resulted in the term of Supervised Release is a class C felony.

Accordingly, Defendant understands that if Defendant commits one or more violations of supervised release, Defendant could serve a total term of incarceration greater than the maximum sentence authorized by statute for Defendant's offense or offenses of conviction.

3. The Court is Not a Party to this Plea Agreement

The Court is not a party to this Plea Agreement and may accept or reject it. Defendant acknowledges that no promises of any type have been made to Defendant with respect to the sentence the Court will impose in this matter.

1 Defendant understands the following:

- 2 a. sentencing is a matter solely within the discretion of the Court;
- 3 b. the Court is under no obligation to accept any recommendations
- 4 made by the United States or Defendant;
- 5 c. the Court will obtain an independent report and sentencing
- 6 recommendation from the United States Probation Office;
- 7 d. the Court may exercise its discretion to impose any sentence it
- 8 deems appropriate, up to the statutory maximum penalties;
- 9 e. the Court is required to consider the applicable range set forth
- 10 in the United States Sentencing Guidelines, but may depart
- 11 upward or downward under certain circumstances; and
- 12 f. the Court may reject recommendations made by the United
- 13 States or Defendant, and that will not be a basis for Defendant
- 14 to withdraw from this Plea Agreement or Defendant's guilty
- 15 plea.

16 4. Potential Immigration Consequences of Guilty Plea

17 If Defendant is not a citizen of the United States, Defendant understands the
18 following:

- 19 a. pleading guilty in this case may have immigration
- 20 consequences;
- 21 b. a broad range of federal crimes may result in Defendant's
- 22 removal from the United States, including the offense to which
- 23 Defendant is pleading guilty;
- 24 c. removal from the United States and other immigration
- 25 consequences are the subject of separate proceedings; and
- 26 d. no one, including Defendant's attorney or the Court, can predict
- 27 with absolute certainty the effect of a federal conviction on
- 28 Defendant's immigration status.

1 Defendant affirms that Defendant is knowingly, intelligently, and voluntarily
2 pleading guilty as set forth in this Plea Agreement, regardless of any immigration
3 consequences that Defendant's guilty plea may entail.

4 5. Waiver of Constitutional Rights

5 Defendant understands that by entering this guilty plea, Defendant is
6 knowingly and voluntarily waiving certain constitutional rights, including the
7 following:

- 8 a. the right to a jury trial;
9 b. the right to see, hear and question the witnesses;
10 c. the right to remain silent at trial;
11 d. the right to testify at trial; and
12 e. the right to compel witnesses to testify.

13 While Defendant is waiving certain constitutional rights, Defendant
14 understands that Defendant retains the right to be assisted by an attorney through
15 the sentencing proceedings in this case and any direct appeal of Defendant's
16 conviction and sentence, and that an attorney will be appointed at no cost if
17 Defendant cannot afford to hire an attorney.

18 Defendant understands and agrees that any defense motions currently
19 pending before the Court are mooted by this Plea Agreement, and Defendant
20 expressly waives Defendant's right to bring any additional pretrial motions.

21 6. Elements of the Offense

22 The United States and Defendant agree that in order to convict Defendant of
23 Possession with Intent to Distribute 40 Grams of Fentanyl, in violation of 21
24 U.S.C. § 841(a)(1), (b)(1)(B)(vi), the United States would have to prove the
25 following beyond a reasonable doubt.

- 26 a. *First*, on or about ~~January 11, 2019~~ ^{June 6, 2022}, in the Eastern District of
27 Washington, Defendant, knowingly possessed fentanyl, a
28 Schedule II controlled substance;

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1 b. *Second*, Defendant possessed the fentanyl with the intent to
2 distribute it to another person; and

3 c. *Third*, the substances possessed contained 40 grams or more of
4 fentanyl.

5 7. Factual Basis and Statement of Facts

6 The United States and Defendant stipulate and agree to the following: the
7 facts set forth below are accurate; the United States could prove these facts beyond
8 a reasonable doubt at trial; and these facts constitute an adequate factual basis for
9 Defendant's guilty plea.

10 The United States and Defendant agree that this statement of facts does not
11 preclude either party from presenting and arguing, for sentencing purposes,
12 additional facts that are relevant to the Sentencing Guidelines computation or
13 sentencing, unless otherwise prohibited in this Plea Agreement.

14 In early 2022, Department of Homeland Security, Homeland Security
15 Investigations (HSI) agents were investigating a drug trafficker operating in the
16 Wenatchee, Washington area. This source of supply known to travel from Arizona
17 to the Wenatchee area and engage in drug distribution activities. During the
18 investigation, on January 17, 2022, Wenatchee Police officers initiated a traffic
19 stop of a vehicle being driven by the Defendant, David Nabel Akhdary. During
20 the traffic stop, the Defendant provided a Tennessee Driver's License in a different
21 name. The Defendant was subsequently released, however, upon learning of his
22 true identity, Wenatchee police officers attempted to locate the Defendant at the
23 Red Lion Hotel. The officers were unable to locate the Defendant. Later, the
24 officers obtained arrest warrants for the Defendant for violations of obstructing a
25 public servant and providing a false/misleading statement.

26 In March 2022, agents learned the source of supply was likely in Wenatchee
27 and began conducting surveillance at the sources suspected location. During this
28

1 surveillance, agents obtained information the room the source of supply was
2 staying in was rented in the name of the Defendant.

3 In June 2022, agents obtained information the source of supply was again in
4 the Wenatchee area. This information provided the hotel where the source of
5 supply was staying. While conducting surveillance at this location, agents
6 observed the source of supply meeting with the Defendant and loading several
7 bags into the source of supply's vehicle and the Defendant's vehicle.

8 On June 5, 2022, Red Lion hotel staff contacted 911 reporting a suspicious
9 odor coming from room #252. Upon arriving on scene, a Columbia River Drug
10 Task Force Officer (TFO) was provided crystal-like shards obtained by the hotel
11 cleaning staff outside room #252. A field test of the shards returned presumptive
12 positive for methamphetamine.

13 Subsequently on June 6, 2022, Red Lion hotel staff contacted law
14 enforcement and reported the Defendant was causing issues at the hotel. Red Lion
15 staff indicated the Defendant requested to be moved from his room to room #114.
16 Cleaning staff reported that morning, while cleaning the Defendant's old room,
17 they observed leftover narcotics. Upon arriving at the hotel, a law enforcement
18 officer observed multiple crystal shards consistent with the previous evening's
19 shards and two blue pills consistent with M-30 fentanyl pills. Agents subsequently
20 obtained a search warrant for the Defendant's new room, room #114.

21 While conducting surveillance on June 6, 2022, agents observed a male,
22 matching the description of the Defendant, exit the hotel and meet with a male
23 subject who arrived on foot. Officers proceeded to approach the Defendant and
24 take him into custody. Located in a backpack the Defendant was wearing at the
25 time of his arrest, were a small amount of crystal-like substance, and
26 approximately 3,000 M-30 fentanyl pills. The backpack also contained a loaded
27 9mm Beretta handgun.

1 In a post-arrest interview, the Defendant sated he was attempting to sell
2 fentanyl pills to other individuals in the Wenatchee area on behalf of the source of
3 supply. The Defendant further identified the gun as the source of supply's.

4 Subsequent Drug Enforcement Administration laboratory testing confirmed
5 the package seized from the Defendant contained 3,399 tablets, containing 361.8
6 grams of N-Phenyl-N-[1-(2-phenylethyl)-4piperidiny] propenamide (a/k/a
7 fentanyl). The Defendant stipulates fentanyl is a Schedule II controlled substance.
8 The Defendant further stipulates these acts occurred within the Eastern District of
9 Washington.

10 8. The United States' Agreements

11 The United States Attorney's Office for the Eastern District of Washington
12 agrees not to bring additional charges against Defendant based on information in
13 its possession at the time of this Plea Agreement that arise from conduct that is
14 either charged in the Indictment or identified in discovery produced in this case,
15 unless Defendant breaches this Plea Agreement before sentencing.

16 9. United States Sentencing Guidelines Calculations

17 Defendant understands and acknowledges that the United States Sentencing
18 Guidelines ("U.S.S.G." or "Guidelines") apply and that the Court will determine
19 Defendant's advisory range at the time of sentencing, pursuant to the Guidelines.
20 The United States and Defendant agree to the following Guidelines calculations.

21 a. Base Offense Level

22 The United States and the Defendant agree that the base offense level for
23 Possession with Intent to Distribute 40 Grams of Fentanyl, in violation of 21
24 U.S.C. § 841(a)(1), (b)(1)(B)(vi) is 28. U.S.S.G. § 2D1.1(c)(6).

25 b. Special Offense Characteristics

26 The United States and the Defendant agree that Defendant's base offense
27 level is increased by 2 levels because Defendant possessed a firearm. U.S.S.G.
28 § 2D1.1(b)(1).

1 c. Acceptance of Responsibility

2 The United States will recommend that Defendant receive a three-level
3 downward adjustment for acceptance of responsibility, pursuant to U.S.S.G.
4 § 3E1.1(a), (b), if Defendant does the following:

- 5 i. accepts this Plea Agreement;
- 6 ii. enters a guilty plea at the first Court hearing that takes
7 place after the United States offers this Plea Agreement;
- 8 iii. demonstrates recognition and affirmative acceptance of
9 Defendant's personal responsibility for Defendant's
10 criminal conduct;
- 11 iv. provides complete and accurate information during the
12 sentencing process; and
- 13 v. does not commit any obstructive conduct.

14 The United States and Defendant agree that at its option and on written
15 notice to Defendant, the United States may elect not to recommend a reduction for
16 acceptance of responsibility if, prior to the imposition of sentence, Defendant is
17 charged with, or convicted of, any criminal offense, or if Defendant tests positive
18 for any controlled substance.

19 d. No Other Agreements

20 The United States and Defendant have no other agreements regarding the
21 Guidelines or the application of any Guidelines enhancements, departures, or
22 variances. Defendant understands and acknowledges that the United States is free
23 to make any sentencing arguments it sees fit, including arguments arising from
24 Defendant's uncharged conduct, conduct set forth in charges that will be dismissed
25 pursuant to this Agreement, and Defendant's relevant conduct.

26 e. Criminal History

27 The United States and Defendant have no agreement and make no
28 representations about Defendant's criminal history category, which will be

1 determined by the Court after the United States Probation Office prepares and
2 discloses a Presentence Investigative Report.

3 10. Incarceration

4 Pursuant to Fed. R. Crim. P. 11(c)(1)(C), Defendant and the United States
5 jointly recommend that Defendant be sentenced to a term of imprisonment between
6 60 and 87 months.

7 If the Court rejects this Plea Agreement, pursuant to Fed. R. Crim. P.
8 11(c)(5), Defendant and the United States agree that they each may withdraw from
9 this Plea Agreement. If Defendant withdraws from this Plea Agreement,
10 Defendant may withdraw his plea of guilty. If the United States withdraws from
11 this Plea Agreement, the United States may prosecute Defendant for any and all
12 criminal conduct involving or relating to the underlying facts and circumstances of
13 this case and any other federal offense Defendant has committed.

14 11. Supervised Release

15 The United States and Defendant each agree to recommend 4 years of
16 supervised release. Defendant agrees that the Court's decision regarding the
17 conditions of Defendant's Supervised Release is final and non-appealable; that is,
18 even if Defendant is unhappy with the conditions of Supervised Release ordered by
19 the Court, that will not be a basis for Defendant to withdraw Defendant's guilty
20 plea, withdraw from this Plea Agreement, or appeal Defendant's conviction,
21 sentence, or any term of Supervised Release.

22 The United States and Defendant agree to recommend that in addition to the
23 standard conditions of supervised release imposed in all cases in this District, the
24 Court should also impose the following conditions:

- 25 a. The United States Probation Officer may conduct, upon
26 reasonable suspicion, and with or without notice, a search of
27 Defendant's person, residences, offices, vehicles, belongings,
28 and areas under Defendant's exclusive or joint control.

1 b. Defendant shall participate and complete such drug testing and
2 drug treatment programs as the Probation Officer directs.

3 c. Defendant shall complete mental health evaluations and
4 treatment, including taking medications prescribed by the
5 treatment provider. Defendant shall allow reciprocal release of
6 information between the Probation Officer and the treatment
7 provider. Defendant shall contribute to the cost of treatment
8 according to the Defendant's ability.

9 12. Criminal Fine

10 The United States and Defendant may make any recommendation
11 concerning the imposition of a criminal fine. Defendant acknowledges that the
12 Court's decision regarding a fine is final and non-appealable; that is, even if
13 Defendant is unhappy with a fine ordered by the Court, that will not be a basis for
14 Defendant to withdraw Defendant's guilty plea, withdraw from this Plea
15 Agreement, or appeal Defendant's conviction, sentence, or fine.

16 13. Mandatory Special Penalty Assessment

17 Defendant agrees to pay the \$100 mandatory special penalty assessment to
18 the Clerk of Court for the Eastern District of Washington, pursuant to 18 U.S.C.
19 § 3013.

20 14. Payments While Incarcerated

21 If Defendant lacks the financial resources to pay the monetary obligations
22 imposed by the Court, Defendant agrees to earn money toward these obligations by
23 participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

24 15. Additional Violations of Law Can Void Plea Agreement

25 The United States and Defendant agree that the United States may, at its
26 option and upon written notice to the Defendant, withdraw from this Plea
27 Agreement or modify its sentencing recommendation if, prior to the imposition of
28

1 sentence, Defendant is charged with or convicted of any criminal offense or tests
2 positive for any controlled substance.

3 16. Waiver of Appeal Rights

4 Defendant understands that Defendant has a limited right to appeal or
5 challenge Defendant's conviction and the sentence imposed by the Court.

6 Defendant agrees to waive the right to appeal the conviction and sentence in
7 this matter if the Court imposes a prison term consistent with the terms of this Fed.
8 R. Crim. P. 11(c)(1)(C) plea agreement.

9 If the Court sentences Defendant outside the Rule 11(c)(1)(C) and
10 Defendant chooses not to withdraw, then the following applies: Defendant agrees
11 to waive his right to appeal his conviction and sentence if the Court imposes a
12 prison term no higher than the high end of the applicable guideline range as
13 determined by the Court and imposes no more than 5 years supervised release. If
14 the Court imposes a sentence higher than the high end of the applicable guideline
15 range and/or greater than 5 years of supervised release, Defendant may appeal only
16 the substantive reasonableness of his sentence.

17 Defendant expressly waives the right to file any post-conviction motion
18 attacking Defendant's conviction and sentence, including a motion pursuant to 28
19 U.S.C. § 2255, except one based on ineffective assistance of counsel arising from
20 information not now known by Defendant and which, in the exercise of due
21 diligence, Defendant could not know by the time the Court imposes sentence.

22 Nothing in this Plea Agreement shall preclude the United States from
23 opposing any post-conviction motion for a reduction of sentence or other attack
24 upon the conviction or sentence, including, but not limited to, writ of habeas
25 corpus proceedings brought pursuant to 28 U.S.C. § 2255.

26 Defendant expressly waives Defendant's right to bring any motion for
27 Compassionate Release other than a motion arising from the bases set forth in
28 Section 1B1.13 of the Sentencing Guidelines.

1 17. Compassionate Release

2 In consideration for the benefits Defendant is receiving under the terms of
3 this Plea Agreement, Defendant expressly waives Defendant's right to bring any
4 motion for Compassionate Release other than a motion arising from one of the
5 specific bases set forth in this paragraph of this Plea Agreement. The United States
6 retains the right to oppose, on any basis, any motion Defendant files for
7 Compassionate Release.

8 The only bases on which Defendant may file a motion for Compassionate
9 Release in the Eastern District of Washington are the following:

10 a. Medical Condition of Defendant

- 11 i. Defendant is suffering from a terminal illness (i.e., a
12 serious and advanced illness with an end of life
13 trajectory). A specific prognosis of life expectancy (i.e.,
14 a probability of death within a specific time period) is not
15 required. Examples include metastatic solid-tumor
16 cancer, amyotrophic lateral sclerosis (ALS), end-stage
17 organ disease, and advanced dementia; or
18 ii. Defendant is suffering from a serious physical or medical
19 condition, a serious functional or cognitive impairment,
20 or deteriorating physical or mental health because of the
21 aging process that substantially diminishes the ability of
22 the defendant to provide self-care within the environment
23 of a correctional facility and from which Defendant is not
24 expected to recover.

25 b. Age of Defendant

- 26 i. Defendant is at least 65 years old, is experiencing a
27 serious deterioration in physical or mental health because
28 of the aging process; and has served at least 10 years or

1 75 percent of Defendant's term of imprisonment,
2 whichever is less; or

- 3 ii. Defendant is at least 70 years old and has served at least
4 30 years in prison pursuant to a sentence imposed under
5 18 U.S.C. § 3559(c) for the offense or offenses for which
6 Defendant is imprisoned.

7 c. Family Circumstances

- 8 i. The caregiver of Defendant's minor child or children has
9 died or become incapacitated, and Defendant is the only
10 available caregiver for Defendant's minor child or
11 children; or
12 ii. Defendant's spouse or registered partner has become
13 incapacitated, and Defendant is the only available
14 caregiver for Defendant's spouse or registered partner.

15 d. Subsequent Reduction to Mandatory Sentence

- 16 i. Defendant pleaded guilty to an offense which, on the date
17 of Defendant's guilty plea, carried a mandatory minimum
18 sentence; and
19 ii. after the entry of judgment, the length of the mandatory
20 minimum sentence for Defendant's offense of conviction
21 was reduced by a change in the law; and
22 iii. the application of the reduced mandatory minimum
23 sentence would result in Defendant receiving a lower
24 overall sentence.

25 e. Ineffective Assistance of Counsel

- 26 i. Defendant seeks Compassionate Release based on a
27 claim of ineffective assistance of counsel arising from
28 information that Defendant both

1. did not know at the time of Defendant's guilty plea, and
2. could not have known, in the exercise of due diligence, at the time the Court imposed sentence.

18. Withdrawal or Vacatur of Defendant's Plea

Should Defendant successfully move to withdraw from this Plea Agreement or should Defendant's conviction be set aside, vacated, reversed, or dismissed under any circumstance, then:

- a. this Plea Agreement shall become null and void;
- b. the United States may prosecute Defendant on all available charges;
- c. The United States may reinstate any counts that have been dismissed, have been superseded by the filing of another charging instrument, or were not charged because of this Plea Agreement; and
- d. the United States may file any new charges that would otherwise be barred by this Plea Agreement.

The decision to pursue any or all of these options is solely in the discretion of the United States Attorney's Office.

Defendant agrees to waive any objections, motions, and defenses Defendant might have to the United States' decision about how to proceed, including a claim that the United States has violated Double Jeopardy.

Defendant agrees not to raise any objections based on the passage of time, including but not limited to, alleged violations of any statutes of limitation or any objections based on the Speedy Trial Act or the Speedy Trial Clause of the Sixth Amendment.

1 19. Integration Clause

2 The United States and Defendant acknowledge that this document
3 constitutes the entire Plea Agreement between the United States and Defendant,
4 and no other promises, agreements, or conditions exist between the United States
5 and Defendant concerning the resolution of the case.


6 This Plea Agreement is binding only on the United States Attorney's Office
7 for the Eastern District of Washington, and cannot bind other federal, state, or local
8 authorities.

9 The United States and Defendant agree that this Agreement cannot be
10 modified except in a writing that is signed by the United States and Defendant.

11 Approvals and Signatures

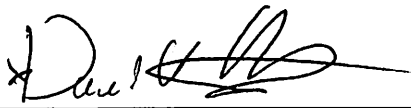
12 Agreed and submitted on behalf of the United States Attorney's Office for
13 the Eastern District of Washington.

14
15 Vanessa R. Waldref
16 United States Attorney

17
18  AUSA
19 Patrick J. Cashman
Assistant United States Attorney

9/29/22
Date

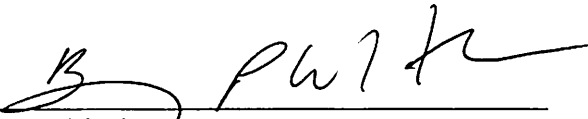
1 I have read this Plea Agreement and I have carefully reviewed and discussed
2 every part of this Plea Agreement with my attorney. I understand the terms of this
3 Plea Agreement. I enter into this Plea Agreement knowingly, intelligently, and
4 voluntarily. I have consulted with my attorney about my rights, I understand those
5 rights, and I am satisfied with the representation of my attorney in this case. No
6 other promises or inducements have been made to me, other than those contained
7 in this Plea Agreement. No one has threatened or forced me in any way to enter
8 into this Plea Agreement. I agree to plead guilty because I am guilty.

9
10 
11 _____
12 David Nabel Akhdary
Defendant

9-29-22

Date

13 I have read the Plea Agreement and have discussed the contents of the
14 agreement with my client. The Plea Agreement accurately and completely sets
15 forth the entirety of the agreement between the parties. I concur in my client's
16 decision to plead guilty as set forth in the Plea Agreement. There is no legal
17 reason why the Court should not accept Defendant's guilty plea.

18 
19 _____
20 Bryan Whitaker
Attorney for Defendant

9/29/22

Date